

State of California

Department of Education

LAST MINUTE MEMORANDUM

DATE: September 7, 2004

TO: **MEMBERS, STATE BOARD OF EDUCATION**

FROM: Sue Stickel, Deputy Superintendent
Curriculum Instruction Branch

RE: Item No. 20

SUBJECT: Immediate Intervention/Underperforming Schools Program (II/USP) and High Priority Schools Grant Program (HPSGP): Proposed Definition of Significant Growth: Approve Commencement of the Rulemaking Process

Please review the revised Attachments 1, 2, and 3 for Item 20. Attachment 4 is the Economic and Fiscal Impact Statement and a Summary of the Fiscal Impact Analysis. The summary concludes that there is no fiscal impact on these proposed regulations.

Attachment(s)

Attachment 1: Initial Statement of Reasons (2 Pages)

Attachment 2: Title 5. Education, California State Board of Education Notice of Proposed Rulemaking, II/USP and HPSGP (4 Pages)

Attachment 3: Title 5. Education, Division 1. State Department of Education, Chapter 2. Pupils, Subchapter 4. Statewide Testing of Pupils and Evaluation Procedures, Article 1.6. Definition of Significant Growth (1 Page)

Attachment 4: Economic and Fiscal Impact Statement (12 Pages)
(This attachment is not available for viewing on the Internet. A printed copy is available for viewing in the State Board of Education office.)

INITIAL STATEMENT OF REASONS
**Immediate Intervention/Underperforming Schools Program
and High Priority Schools Grant Program**

SECTION 1030.5. Definition of Significant Growth.

SPECIFIC PURPOSE OF THE PROPOSED REGULATION

For application to schools that have not met growth targets, the proposed regulation is to assess eligibility to continue participating in the II/USP and the HPSGP by determining whether a school has made “significant growth.” The proposed regulation serves two purposes: (1) it specifies a clear standard to determine whether a school has achieved “significant growth” on the Academic Performance Index (API) and (2) as an alternative measurement, it establishes a set of parallel criteria to determine whether a school demonstrates “significant growth” for II/USP and HPSGP schools that do not have a valid API score.

NECESSITY/RATIONALE

A. “Significant Growth” Should be Defined in Order to Determine Continued Eligibility in the “Immediate Intervention/Underperforming Schools Program” for Schools that Have Failed to Meet Growth Targets After 24 Months of Participation.

Education Code Section 52053 establishes the Immediate Intervention/Underperforming Schools Program (II/USP). Schools whose applications are approved received a grant for implementing their Action Plans. The statute requires the State Superintendent of Public Instruction, with the approval of the State Board of Education (SBE), to “identify schools that failed to meet their API growth targets and that have an API score below the 50th percentile in the previous school year relative to ...other schools.” A number of potential consequences may result from a school’s underperformance. After the first year of participation, the potential consequences include, for example, interventions and reassignment of school personnel. (*Education Code* Section 52055).

Education Code Section 52055.5(a) provides that where a school fails to meet its growth targets after 24 months, it may continue to participate in the program for an additional year but only where it shows “**significant growth, as determined by the State Board of Education...**” (emphasis added). After 36 months, a school that does not meet its growth target is no longer eligible to receive funding for the II/USP.

The proposed regulation will specify clear standards to determine eligibility for continued participation by establishing a distinction between a school which fails to achieve any growth and one which achieves its growth target. The proposed regulation also establishes criteria to determine if a school demonstrates “significant growth” for those participating schools that do not have a valid API score. Criteria for schools without valid API scores is necessary in order to minimize exclusion in program participation and to assess eligibility for state interventions and sanctions.

B. “Significant Growth” Should be Defined in Order to Determine Continued Eligibility in the “High Priority Schools Grant Program” for Schools that Have Failed to Meet Growth Targets After 24 months and 36 Months of Participation.

Education Code Section 52055.600 establishes the High Priority Schools Grant Program. Section 52055.650(b) requires that if after 24 months a school has not met its growth target in each year, it is subject to review by the SBE. Such a review may include an examination of the school’s progress relative to reports submitted to the CDE.

Section 52055.650(d) provides that if after 36 months a school has not met its growth targets each year, but demonstrates significant growth, shall continue to participate in the program and receive funding. If after 36 months a school fails to achieve significant growth, it faces state interventions or sanctions.

The proposed regulation will specify clear standards to determine eligibility for continued participation by establishing a distinction between a school which fails to achieve any growth and one which achieves its growth target. The proposed regulation also establishes criteria to determine if a school demonstrates “significant growth” for those participating schools that do not have a valid API. Criteria for schools without valid API scores is necessary in order to minimize exclusion in program participation and to assess eligibility for state interventions and sanctions.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The SBE did not rely on empirical studies, reports, or other documents in drafting the proposed regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The SBE has not identified any alternatives to the proposed regulation that would achieve the specificity demanded to make program participation decisions based on API growth scores. Indeed, the proposed regulation provides a standard as measured by the API and an alternative for those schools that do not have an API score.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulation does not anticipate any impact on small businesses because it is applicable only to schools and because it does not involve any economic activity.

STATE OF CALIFORNIA
CALIFORNIA STATE BOARD OF EDUCATION
1430 N Street; Room 5111
Sacramento, CA 95814

ARNOLD SCHWARZENEGGER, *Governor*



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Immediate Intervention/Underperforming Schools Program (II/USP) **and High Priority Schools Grant Program (HPSGP)**

[Notice published September 17, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **9:00 a.m. on Tuesday, November 2, 2004**, at 1430 N Street, Room 1801, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on November 2, 2004**. The State Board will consider only written comments received by the Regulations Coordinator or at the State Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, CA 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: *Education Code* Sections 33031.

References: *Education Code* sections 52053 et seq. and 52055.650 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Education Code sections 52055.5 and 52055.650 provide for a general standard by which schools participating in the II/USP and HPSGP respectively may receive funding or be subject to state interventions or sanctions. The proposed regulation serves two purposes: (1) it specifies a clear standard to determine whether a school has achieved significant growth on the Academic Performance Index (API) and (2) it establishes a criteria to determine whether a school demonstrates academic growth for those II/USP and HPSG participants that do not have a valid API score.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: TBD

Cost or savings to any state agency: TBD

Costs to any local agency or school district that must be reimbursed in accordance with *Government Code* Section 17561: TBD

Other non-discretionary cost or savings imposed on local educational agencies: TBD

Cost or savings in federal funding to the state: TBD

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: TBD.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: TBD.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because the regulations only relate to local school districts and not to business practices.

CONSIDERATION OF ALTERNATIVES

In accordance with *Government Code* Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Martin Miller, Education Program Assistant
California Department of Education
School Improvement Division
1430 N Street, 4th Floor
Sacramento, CA 95814
Telephone: (916) 324-3455
E-mail: mamiller@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/re/lr/rr/>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Martin Miller, School Improvement Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 324-3455; fax, (916) 324-3580. It is recommended that assistance be requested at least two weeks prior to the hearing.

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 2. Pupils

Subchapter 4. Statewide Testing of Pupils and Evaluation Procedures

Article 1.6. Definition of Significant Growth

§ 1030.5. Definition of Significant Growth.

A school achieves significant growth when its schoolwide Academic Performance Index (API) growth is greater than zero and less than its API growth target, or when the school achieves its schoolwide API growth target but fails to make API growth targets for at least one subgroup.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 52053 et seq. and 52055.650 et seq., Education Code.

§ 1030.6. Criteria to Demonstrate Academic Growth for IIUSP and HPSG Schools Without Valid APIs.

Schools participating in the Immediate Intervention/Underperforming Schools Program and the High Priority Schools Grant Program without a valid API score demonstrate academic growth when the weighted average percent proficient across all California Standards tests in (a) English/language arts and (b) Mathematics increased by at least one percentage point from the prior year to the year in which they have an invalid score. For purposes of this assessment, 0.99 does not equal 1.00.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 52053 et seq. And 52055.650 et seq., Education Code.